



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,257	10/11/2005	Roni Gordon	30753(01156-1004)	1802
30671 7590 06/05/2009 DITTHAVONG MORI & STEINER, P.C. 918 Prince St. Alexandria, VA 22314				
EXAMINER				
GEBREMICHAEL, BRUK A				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
06/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/553,257

Applicant(s)

GORDON, RONI

Examiner

BRUK A. GEBREMICHAEL

Art Unit

3715

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 33-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 33-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/US)
- Paper No(s)/Mail Date 01/15/2009; 05/04/2009; 05/22/2009.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. The following office action is a Non-Final Office Action in response to communications received on 04/01/2009. Claims 1-8, 10-14, 33-64 have been amended. Claims 15-32 have been canceled. New claims 65-94 have been added. Thus, claims 1-14 and 33-94 are pending in this application.

Response to Amendment

2. Applicant's amendment to claim 33 is sufficient to overcome the 35 U.S.C 101 rejection set forth in the previous office action regarding claims 33-47. The Examiner accordingly withdraws the rejection.

Applicant has canceled claims 15-32. This is sufficient to overcome the 35 U.S.C 112, second paragraph rejection set forth in the previous office action regarding claims 15-32. Applicant's amendment to claim 33 is sufficient to overcome the 35 U.S.C 112, second paragraph rejection set forth in the previous office action with regard to claims 33-39.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The drawings do not show the features of claims 56-64, since there appears to be no illustration that corresponds to for example the packaging material for packaging a plurality of different types of food products. The figures presented illustrate packaging material for single food products only. Therefore, the above feature(s) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- Claim(s) 48-55 and 93 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). *See Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (quoting *Benson*, 409 U.S. at 70); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978) (citing *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). See also *In re Bilski* (Fed Cir. 2007-1130, 10/30/2008) where the Fed. Cir. held that method claims must pass the "machine-or-transformation test" in order to be eligible for patent protection under 35 USC 101.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 56-64 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

For example claim 56 recites a packaging material for packaging a plurality of different types of food products in an assembly of food products. However, the current specification appears to be silent regarding a packaging material for packaging a plurality of different types of food products, except for merely stating a plurality of labels or tables for providing information about a plurality of different foods, such as foods in a package or other enclosure (e.g. see page 19, lines 19-24 of specification).

- Claims 2-4, 12-13, are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

For example claim 2 recites "the device is configured to correlate weight of the apportioned food with calories and to cease apportioning food when a correlated weight substantially corresponds to the predetermined number of calories". However, the specification does not describe this functional limitation of the device in such a way as to enable one of ordinary skill in the art to make and/or use the invention. For instance the specification states, "... this device (1) can accept the desired total caloric content of the package and, accessing (2) the conversion table or ERP (3) described above, can produce the portion or portions needed to result in the calorie- based portions and/or total caloric content" (Page 17, lines 21-23 of the specification); but, this does not enable one of ordinary skill in the art to make and/or use the invention.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-14, 65, 40-47, 88-92, 56-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-14, 65, 40-47, 88-92 and 56-64, each of the independent claims 1, 40 and 56 do not appear to have any transitional phrase. Independent claims are required to have at least one transitional phrase that separates the body of the claim from the preamble.

In addition, claim 12 recites "the particular size" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim since neither claim 3 nor claims 2 and 1 from which claim 1 depends directly and indirectly recites any particular size.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claims 1, 9, 48-49 and 51 are rejected under 35 U.S.C. 102(b) as being unpatentable over Missler 6,359,239. Missler discloses the following claimed limitations:

Regarding claim 1, a device for apportioning food (FIG 1, label 2), the device being configured to provide, in response to user input, a portion of a food having a predetermined number of calories (col.2, lines 41-16),

Regarding claim 9, wherein the food is selected from the group consisting of cheese, fruit, vegetables, poultry, meat, fish and bread (col.1, lines 32-45),

Regarding claim 48, a method receiving input corresponding to a food product; determining caloric content of the food product based on the input (col.5, lines 37-45); deriving, based on the caloric content nutritional content of the food product in accordance with a pre-determined number of calories (see col.5, lines 61-67); and presenting the nutritional content to a consumer in accordance with the pre-determined number of calories (col.6, lines 1-8),

Regarding claim 49, utilizing the pre-determined number of calories across a plurality of other food products for deriving nutritional content corresponding to the plurality of other food products (col.6, lines 9-28),

Regarding claim 51, the number of calories per serving of the food product is not presented to the consumer (col.5, lines 61-64).

- Claims 40-42, 44 and 91-92 are rejected under 35 U.S.C. 102(b) as being unpatentable over Rhee 2001/0043968. Rhee discloses the following claimed limitations:

Regarding claim 40, a plurality of packages of food, wherein each package of food has an indication thereon of a uniform caloric content of 50 calories or multiples thereof (FIG 1c and 1d),

Regarding claim 41, each package of food has an indication thereon of nutritional information per uniform caloric content (Para.0021),

Regarding claim 42, at least two of the packages contain different types of foods (Fig 1c is "roll cake" and fig 1d is "length of candy"),

Regarding claims 44, 91 and 92, the indication is in the form of a table; each package of food has an indication thereon of a uniform caloric content of 100 calories or multiples thereof; the indications are provided on the front of the package (see FIG 1c and 1d).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- Claims 6, 50, 55, 65 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239.

Regarding claims 6 and 55, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the predetermined number of calories is selected from the group consisting of/about 50, 100, 150, 200, 250, 300, 350, 400, 450, 500, 550, 600, 750, and 1000.

However, one of ordinary skill in the art at the time of the invention was made would readily recognize the fact from the teaching of Missler that the user is capable of

apportioning the food product into any desired calorie (or weight) amount using the device of the prior art (e.g. see col.3, lines 61-67), and therefore, specifying a particular calorie amount (or set of calorie amounts) for a specific purpose requires only a routine skill in the art.

Regarding claim 50 and 93, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the pre-determined number of calories is 50 or a multiple thereof; the pre-determined number of calories is 100 or a multiple thereof.

However, as already discussed with respect to claims 6 and 55, one of ordinary skill in the art at the time of the invention was made would readily recognize the fact from the teaching of Missler that the user is capable of apportioning the food product into any desired calorie (or weight) amount using the device of the prior art (e.g. see col.3, lines 61-67), and therefore, specifying a particular calorie amount (or set of calorie amounts) for a specific purpose requires only a routine skill in the art.

Regarding claim 65, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the user input comprises the predetermined number of calories.

However, since the prior art teaches that Missler's device is capable of indicating whether the measured weight or calories of the food on the scale is insufficient or excessive (col.3, lines 61-67 and col.4, lines 1-4), one of ordinary skill in the art would readily recognize the fact from the teaching of the reference that the user is capable of

inputting any desired weight or calorie of the food to be apportioned into the device, and then add (or reduce) slices of the food on the scale until the desired weight or calorie is obtained. Therefore, the above claimed feature is implicitly suggested by the prior art.

- Claims 2-5, 7-8 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Sly 4,300,645.

Regarding claim 2, Missler discloses the claimed limitations as discussed above.

Missler further discloses, a scale for dynamically weighing apportioned food (col.2, lines 56-60), the device is configured to correlate weight of the apportioned food with calories (col.6, lines 14-22)

Missler does not explicitly disclose, the device is configured to cease apportioning food when a correlated weight substantially corresponds to the predetermined number of calories.

However, Sly teaches a device configured to cease apportioning food when the desired weight of food has been deposited on the scale (col.3, lines 5-19).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Sly by integrating a cutting device such as a slicer that utilizes a balanced Wheatstone bridge controlling unit in order to allow the device to slice the given food product until the deposited food on the scale reaches the desired weight or calorie so that the controlling unit would automatically stops slicing additional portions when the desired weight or calorie is reached; thereby making the modified device more efficient to apportion the food product into any desired weight or calorie.

Missler in view of Sly teaches the claimed limitations as discussed above. Missler further discloses,

Regarding claim 3, correlation is performed based on one or more instructions stored in a tangible medium (col.2, lines 56-60),

Regarding claim 4, the device is configured to access internal or external software including instructions for correlating weight of the apportioned food into calories and causing the device to cease apportioning food when the weight is substantially equivalent to the predetermined number of calories (col.6, lines 3-8),

Regarding claim 5, the device is configured to correlate the predetermined number of calories into one or more food units of a particular size, each food unit comprising a number of calories equal to a portion of the predetermined number of calories, and to apportion the one or more food units based on a desired number of calories (col.5, lines 37-45 and col.6, lines 14-28),

Regarding claim 7, Sly further teaches, the device is one or more of a slicer, shredder, or dicer (col.2, lines 8-11).

Therefore, as already discussed above it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Sly by integrating a cutting device such as a slicer that utilizes a balanced Wheatstone bridge controlling unit in order to allow the device to slice the given food product until the deposited food on the scale reaches the desired weight or calorie so that the controlling unit would automatically stops slicing additional portions

when the desired weight or calorie is reached; thereby making the modified device more efficient to apportion the food product into any desired weight or calorie.

Missler in view of Sly teaches the claimed limitations as discussed above. Missler further discloses,

Regarding claim 8, the correlation is performed based on one or more instructions stored in a tangible medium (col.6, lines 3-8),

Regarding claim 10, the device is configured to access internal or external software including instructions for correlating the predetermined number of calories into one or more food units of a particular size (col.6, lines 3-8), each food unit comprising a number of calories equal to the predetermined number of calories divided by the total number of food units, and for apportioning the one or more food units based on the desired number of calories (col.6, lines 14-28),

Regarding claims 11 and 13, Missler in view of Sly teaches the claimed limitations as discussed above.

Missler in view of Sly does not explicitly teach, one or more instructions are associated with enterprise resource planning (ERP) software.

However, one of ordinary skill in the art would readily recognize the fact from the teaching of the prior art (e.g. Missler col.6, lines 3-8) that the user would use any program in the device that converts the weight of a given food item into a calorie since incorporating such function in the device is already old and well known in the art (as already taught by the prior art); and therefore, using a particular program in the device

(e.g. enterprise resource planning, ERP) that has the same function as that of the prior art requires only a routine skill in the art.

Regarding claim 12, Missler in view of Sly teaches the claimed limitations as discussed above.

Sly further teaches, the device is a slicer, the one or more food units are slices, and the particular size is characterized by a slice thickness associated with a slice surface area (col.5, lines 21-37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention was made to modify the invention of Missler in view of Sly by integrating a slicer in order to allow the user to easily divide up a given food product such as meat into a desired weight efficiently; thereby allowing the user to produce as many slices as required in a small amount of time.

Note that one of ordinary skill in the art (at the time of the invention was made) recognizes that weight of any food slice is defined by associating the volume and density of the slice; and the volume is defined by associating the thickness of the slice with its surface area. Therefore, apportioning the slice based on a particular weight also implies apportioning the slice based on its thickness and surface area.

- Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Prussia 5,372,030.

Regarding claim 14, Missler discloses the claimed imitations as discussed above.

Missler does not explicitly disclose, the device is a fruit and/or vegetable sorting machine.

However, Prussia teaches, a device being a fruit and/or vegetable sorting machine (col.5, lines 36-44).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Prussia by incorporating a portable firmness testing device in order to help the user to easily identify the fruits that are ripe before measuring their weight so that the user would collect only those that are ripe and edible.

- Claims 43, 56-59, 64 and 88-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhee 2001/0043968.

Regarding claim 43, Rhee discloses the claimed limitations as discussed above.

Rhee does not explicitly disclose, at least two of the packages have different weights.

However, it is a well known to one of ordinary skill in the art at the time of the invention was made to realize the fact that packages of different food products would have similar or different weights based on the quantity of food packed in the packages, and as such the two different types of food products taught by Rhee (e.g. FIG 1c, *roll cake* and FIG 1d, *length of candy*) would have different weights based on their quantity; therefore, reciting this well known practice does not distinguish the current invention from the prior art.

Regarding claim 56, Rhee discloses the following claimed limitations; a packaging material for packaging a plurality of food products in an assembly of food products (Para.0008), the packaging material displaying the caloric content of each of a

the different types of food products as per-a pre-determined number of calories (Para.0014), wherein the pre-determined number of calories is 50 or a multiple thereof (FIG 3f).

Rhee does not explicitly disclose the packaging material for packaging a plurality of different types of food products.

However, one of ordinary skill in the art would readily realize the fact from the teaching of Rhee that at least the package depicted on FIG 3f has two sections that contain different types of food products (see FIG A in the response to argument section below regarding the Examiner's interpretation). Moreover, such practice has already been disclosed by US 2003/0219513 (Para.0107) before the current invention was made.

Regarding claim 57, Rhee discloses the claimed limitations as discussed above.

Rhee does not explicitly disclose, each of the plurality of different types of food products having the same pre-determined number of calories.

However, since the prior art suggests packing different food products in a container (FIG 3f), it requires only a routine skill in the art to pack different food items that have the same calorie content in one container, and food items that have different calories in a separate container.

Moreover, the above practice is already disclosed by US 2003/0219513 (Para.0106) before the current invention was made; and therefore this does not distinguish the current invention from the prior art.

Rhee discloses the claimed limitations as discussed above. Rhee further discloses,

Regarding claim 58, the packaging material further displays nutritional content of each of the different types of food product per the predetermined number of calories for each of the different types of food products (FIG 3f, labels 100cal, 250cal),

Regarding claim 59, even if Rhee does not explicitly disclose the predetermined number is 50 or 100, one of ordinary skill in the art at the time of the invention was made readily recognizes the fact that calories on labels of food packages are often expressed as multiples of some integer values (or percentage values),. Thus, when the general condition of the claimed subject matter (i.e. labeling calorie values of different food items in a container) is as taught by the prior art (e.g. RHEE FIG 3f), accumulating different food items that have a particular calorie value in a one container requires only a routine skill in the art; and therefore, this does not distinguish the current invention from the prior art. In addition to this, US 2003/0219513 (Para.0106) already discloses the above claimed feature before the current invention was made.

Rhee discloses the claimed limitations as discussed above. Rhee further discloses;

Regarding claim 64, wherein the pre-determined number of calories is selected from the group consisting of 50, 100, 150, 200, 250, 300, 350, 400, 450, 500, 600, 750 and 1000 (Para.0021, lines 1-9),

Regarding claim 88-90, the plurality of packages are within an arrangement of packages; the arrangement comprises a container; the arrangement comprises a display (FIG 3f).

- Claims 33-39, 45-47, 61-63 and 85-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhee 2001/0043968 in view of Arrendale 2004/0045202.

Regarding claim 33, Rhee discloses the following claimed limitations; a package containing multiple servings of food (Para.0021), and an indication thereon of the approximate number of calories of one of the multiple servings of the food in the package (FIG 1e).

Rhee further implicitly discloses that the approximate number of calories of the food in the package (i.e. the sum of the calories on the package) and the approximate number of calories of one of the multiple servings are different, since it is obvious that the total of the calories of the food in the package is different from the calorie of one serving (see FIG 1e).

Rhee does not explicitly disclose, the package having an indication thereon of the approximate number of calories of the food in the package.

However, Arrendale discloses a package labeling invention that teaches, a package having an indication thereon of the approximate number of calories of the food in the package (FIG 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Arrendale by attaching a label on the package that indicates the total amount of calorie of the food in

the package in order to help the consumer to easily recognize the total calorie amount he/she is getting from the given package without doing any mental calculation; thereby saving the consumer significant amount of time.

Regarding claims 34-35 and 85-87, Rhee in view of Arrendale teaches the claimed limitations as discussed above.

Rhee further discloses, the total number of calories is about 20 or more calories greater than the number of calories content of a one serving; the total number of calories is about 50% or more greater than the number of calories of a one serving (see FIG 1e, e.g. *compare 200 calories of one serving amount with 1600 calories of total amount*); the approximate number of calories of any one of the multiple of servings is 50 or 100; the approximate total number of calories of the multiple of servings is a multiple of 50 or 100 (see FIG 1e, e.g. *identify a serving amount of 100 calories, and 1600 calories of total amount is multiple of 100*); the indications are provided on the front of the package (FIG 1e).

Regarding claims 36-38 and 45-46, Rhee in view of Arrendale teaches the claimed limitations as discussed above.

Rhee further discloses, the indications are in the form of a table; the indication(s) are/is printed; the indication(s) are/is on a label (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Arrendale by incorporating a label that lists the nutritional element of a food in a package in the form of a table in order to help the user understand the contents of the food and the amount

of calorie he/she gets from the food so that the user would make appropriate choice based on his/her diet requirements.

Regarding claim 39 and 47, Rhee in view of Arrendale teaches the claimed limitations as discussed above.

Rhee in view of Arrendale does not explicitly teach, the indication(s) are/is in electronic form.

However, one of ordinary skill in the art would recognize the fact from the teaching of the prior art (e.g. Arrendale FIG 1) that the computer printed label is at least prepared and displayed by a computer in electronic form before it gets printed; and therefore the prior art implicitly suggests this limitation.

Regarding claims 61 and 62, Rhee discloses the claimed limitations as discussed above.

Rhee does not explicitly disclose, each food product comprises plural servings and the pre-determined number of calories is greater than the number of calories per serving; the pre-determined number of calories of each of the food products is 50% or more greater than the number of calories per serving.

However, Arrendale teaches, each food product comprises plural servings and the pre-determined number of calories is greater than the number of calories per serving; the pre-determined number of calories of each of the food products is 50% or more greater than the number of calories per serving (Para.0010).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Arrendale by

incorporating a label on the food packages that lists various serving amounts in order to help the user to easily understand the amount of nutrition that he/she gets from the food product based on the types of servings, so that the user would use a particular serving size consistent with his/her nutritional needs.

Regarding claim 63, Rhee discloses the claimed limitations as discussed above.

Rhee does not explicitly disclose, the nutritional content of each of the food products being reported comprises the weight, price, fat (saturated and unsaturated), protein, carbohydrate, vitamin and mineral content of the product.

However, Arrendale teaches, the nutritional content includes the weight, the fat, the saturated fat, the protein, the carbohydrate, the vitamin and mineral of the product (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Arrendale by including food package that displays important nutritional information mandated by USDA in order to inform the consumer the type of nutritional elements that he/she gets from a given package of food; thereby helping the consumer to easily pick a particular package based on his/her diet requirement.

Note that even if Rhee in view of Arrendale does not explicitly teach some of the recited nutritional content (e.g. price), when the general condition of the claimed subject matter is as taught by the prior art (e.g. Arrendale FIG 1) incorporating additional information on the food package in addition to the basic nutritional elements requires

only a routine skill in the art; and therefore, this does not distinguish the current invention from the prior art.

- Claims 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Arrendale 2004/0045202.

Regarding claim 52, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the pre-determined number of calories is different from the number of calories per suggested serving size of the food product or number of calories per weight unit of the food product.

However, Arrendale teaches, the pre-determined number of calories is different from the number of calories per suggested serving size of the food product or number of calories per weight unit of the food product (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Arrendale by specifying the total amount of calorie in the food package and the suitable serving amount of the food item on the label in order to update the consumer the total amount of calorie he/she is getting per package and also the recommended amount of calorie so that the consumer would make appropriate choice when purchasing or consuming the product.

Regarding claim 53, Missler in view of Arrendale discloses the claimed limitations as discussed above.

Missler in view of Arrendale does not explicitly disclose, the pre-determined number of calories is 50% or more calories greater than the number of calories per suggested serving size of the food product.

However, one of ordinary skill in the art at the time of the invention was made would readily recognize the fact that a package of a given food product often has a calorie value (total calorie value of the package) higher than the serving value; and therefore specifying this calorie amount to be some specific value (or percentage) requires only a routine skill in the art.

Regarding claim 54, Missler discloses the claimed limitations as discussed above.

Missler does not explicitly disclose, the nutritional content includes the weight content, the price, the fat content, the saturated fat content, the unsaturated fat content, the trans fat content, the protein content, the carbohydrate content, or the vitamin and mineral content, or a combination thereof.

However, Arrendale teaches, the nutritional content includes the weight content, the fat content, the saturated fat content, the protein content, the carbohydrate content, the vitamin and mineral content, or a combination thereof (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Arrendale by including food package that displays important nutritional information mandated by USDA in order to inform the consumer the type of nutritional elements that he/she gets

from a given package of food; thereby helping the consumer to easily pick a particular package based on his/her diet requirement.

Note that even if Missler in view of Arrendale does not explicitly teach some of the recited nutritional content (e.g. price), when the general condition of the claimed subject matter is as taught by the prior art (e.g. Arrendale FIG 1) incorporating additional information on the food package in addition to the basic nutritional elements requires only a routine skill in the art; and therefore, this does not distinguish the current invention from the prior art.

- Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhee 2001/0043968 in view of Bukowski 2003/0106940.

Regarding claim 60, Rhee discloses the claimed limitations as discussed above.

Rhee does not explicitly teach, the number of calories per serving of the food products is not displayed.

However, Bukowski teaches, the number of calories per serving of the food products is not displayed (FIG 6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Rhee in view of Bukowski by incorporating a computer readable barcodes in order to label food packages that do not have enough space to hold detailed printed information, so that the user would simply scan the bar code thereby acquiring the required information regarding the food item.

- Claims 66-73, 75-81, 83-84 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Teraoka 2003/0004750.

Regarding claim 66 and 67, Missler discloses the following claimed limitations; an apparatus configured to weigh food and determine a number of calories associated with a particular weight and particular type of food (col.5, lines 61-67), provide other nutritional information based on the number of calories and the particular type of food (col.6, lines 1-8).

Missler does not disclose determine a price for weighed food; the apparatus is configured to be provided at a point-of-sale terminal.

However, Teraoka teaches, determine a price for weighed food (see Para.0032, lines 1-5); the apparatus is configured to be provided at a point-of-sale terminal (Para.0038 and Para.0070, lines 1-5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Teraoka by incorporating a pricing device which calculates and prints or displays the price of a given food product based on the weight in order to help the consumer to determine whether the cost of the food is within his/her ability to buy so that the consumer either reduces or increases the weight of the food to match his/her budget; thereby facilitating a smooth transaction at the checkout line.

Missler in view of Teraoka teaches the claimed limitations as discussed above. Missler further discloses,

Regarding claim 68, the number of calories and/or the other nutritional information are presented to a user via a display (col.5, lines 61-67),

Regarding claims 69 and 70, the number of calories is determined based on a plurality of predefined associations for the type of food relating a plurality of weights to a plurality of calories; the plurality of associations is stored in a memory of the apparatus or retrieved from an external storage (col.6, lines 9-22),

Regarding claim 71, Teraoka further teaches, the plurality of associations retrieved from an external storage location is associated with an enterprise resource planning (ERP) software (Para.0073, lines 1-6 and Para.0074).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention as made to modify the invention of Missler in view of Teraoka by connecting the pricing device with an administration device that stores manufacturing data related to the food products in order to allow the pricing device to get up-to-date information for the food items such as current prices of the food products, so that the consumer would get all the latest information before purchasing or consuming the product.

Note that even if Missler in view of Teraoka does not explicitly state enterprise resource planning (ERP) software, one of ordinary skill in the art would readily recognize from the teaching of the prior art that any suitable software that evaluates weight and nutritional information of food products is capable of performing the above claimed limitation; and therefore, incorporating a particular software is a matter of design choice since the device of the prior art works well for the intended purpose.

Regarding claim 72, Missler in view of Teraoka teaches the claimed limitations as discussed above.

Missler further implicitly discloses, the plurality of associations is stored in a weight-calorie conversion table (col.6, lines 23-39).

Regarding claims 73 and 77, Missler in view of Teraoka teaches the claimed limitations as discussed above.

Teraoka further teaches, the number of calories and/or the other nutritional information is presented to a user via a printing device; the apparatus comprises one or more of a wrapping machine, size reduction machine, label printer, or cash register (Para.0032, lines 1-5).

Therefore, as already indicated above, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Teraoka by incorporating a pricing device which calculates and prints or displays the price of a given food product based on the weight in order to help the consumer to determine whether the cost of the food is within his/her ability to buy so that the consumer either reduces or increases the weight of the food to match his/her budget; thereby facilitating a smooth transaction at the checkout line.

Missler in view of Teraoka teaches the claimed limitations as discussed above. Missler further discloses,

Regarding claim 75, the apparatus is configured to aggregate a plurality of determined numbers of calories, including the number of calories associated with a plurality of types of food (col.6, lines 23-39),

Regarding claim 76, the apparatus is integrated with or communicatively coupled to another device (col.4, lines 10-17),

Regarding claim 78, the apparatus is further configured to provide aggregated other nutritional information, including the other nutritional information, associated with the plurality of types of food, and to determine an aggregated price for a plurality of weighed foods, including the weighed food (col.6, lines 23-39).

Regarding claims 79-80 and 84, Missler in view of Teraoka teaches the claimed limitations as discussed above.

Missler in view of Teraoka does not explicitly teach, the determined number of calories is about 50 calories or a multiple thereof; the determined number of calories is about 100 calories or a multiple thereof; the pre-determined number of calories is 100.

However, at the time of the invention was made, one of ordinary skill in the art would readily recognize the fact from the teaching of the prior art that calories on labels of food packages are often expressed as multiples of some integer value (or percentage values), and therefore, specifying a particular calorie value (or a calorie value which is a multiple a particular integer) on the food package requires only a routine skill in the art; and therefore this does not distinguish the current invention from the prior art.

Missler in view of Teraoka teaches the claimed limitations as discussed above.
Missler further discloses;

Regarding claim 81, the apparatus provides the other nutritional information in relation to a pre-determined number of calories of the particular type of food (col.6, lines 14-39),

Regarding claim 83, a unit weight for the pre-determined number of calories is provided (col.6, lines 23-39).

- Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Teraoka 2003/0004750 and further in view of Arrendale 2004/0045202.

Regarding claim 74, Missler in view of Teraoka teaches the claimed limitations as discussed above.

Missler in view of Teraoka does not explicitly teach, the other nutritional information includes fat content, saturated fat content, trans fat content, protein content, carbohydrate content, vitamin content, and/or mineral content.

However, Arrendale teaches, the nutritional content includes the weight, the fat content, the saturated fat content, the protein content, the carbohydrate content, the vitamin content, and/or mineral content of the product (FIG 1, label 40).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Teraoka and further in view of Arrendale by including food package that displays important nutritional information mandated by USDA in order to inform the consumer the type of nutritional elements that he/she gets from a given package of food; thereby helping the consumer to easily pick a particular package based on his/her diet requirement.

Note that even if Rhee in view of Arrendale does not explicitly teach some of the recited nutritional content (e.g. trans fat content), when the general condition of the claimed subject matter is as taught by the prior art (e.g. Arrendale FIG 1) incorporating additional information on the food package in addition to the basic nutritional elements

requires only a routine skill in the art; and therefore, this does not distinguish the current invention from the prior art.

- Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Teraoka 2003/0004750 and further in view of Overman 5,483,472.

Regarding claim 82, Missler in view of Teraoka teaches the claimed limitations as discussed above.

Missler in view of Teraoka does not explicitly teach, the price is determined in relation to the pre-determined number of calories and a unit price for the pre-determined number of calories is provided.

However, Overman teaches, a device which the price is determined in relation to the pre-determined number of calories and a unit price for the pre-determined number of calories is provided (col.4, lines 1-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Teraoka and further in view of Overman by incorporating a portable record keeper in order to help the user to determine the price of the food items he/she is purchasing in addition to the calorie so that the user would make a proper choice of the food he/she is purchasing based on not only the calorie of the food item, but also the price of the food item.

- Claim 94 is rejected under 35 U.S.C. 103(a) as being unpatentable over Missler 6,359,239 in view of Overman 5,483,472.

Regarding claim 94, Missler discloses the following claimed limitations; an apparatus comprising a scale configured to weigh food (FIG 1, label 16), and a

processor configured to dynamically determine caloric content and at least one other piece of nutritional information for a particular quantity of food being weighed by the scale (col.6, lines 14-39), wherein the nutritional information is output to a display for presentation in accordance with a pre-determined number of calories (col.5, lines 37-45).

Missler does not disclose, nutritional information along with a price for the particular quantity of food output to a display.

However, Overman teaches a device on which nutritional information along with a price for the particular quantity of food output to a display (col.4, lines 1-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention of Missler in view of Overman by incorporating a portable record keeper in order to help the user to determine the price of the food items he/she is purchasing in addition to the calorie so that the user would make a proper choice of the food he/she is purchasing based on not only the calorie of the food item, but also the price of the food item.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 33, 40-42, 56-59 and 64 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 35-37 and 45-47 of the pending Application No. 11/147253; and also over claims 23, 37, 51, 58-59, 63-64, 97, 106-107, 110, 116-117, and 121-122 of the pending application No. 10/151106.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed features appear to be an obvious modification of

the claims in the corresponding pending application. For example, claim 56 of the current application recites "a packaging material for packaging a plurality of different types of food products in an assembly of food products". This appears to a routine modification of the device recited in claim 1 of the pending application 11/147253. Thus, it would have been obvious to one of ordinary skill in the art at the time of the current invention was made to recognize the device recited in claim 1 (of the pending application 11/147253) as the package for packaging the food products, since the functional limitation of this device is similar to the packaging material recited in claim 56 of the current application, 10/553257.

Similarly, in the case of pending application 10/151106, for example claim 56 of the current application recites similar limitations as claim 23 of the pending application 10/151106, except for the type of food packaged in the package. However, it would have been an obvious modification to one of ordinary skill in the art at the time of the invention was made to incorporate any additional information such as the type of food on the package (in addition to the calorie content) to identify the product.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments.

9. Applicant's arguments filed on 04/01/2009 have been fully considered but they are not persuasive. In the remarks,
- (1) Applicant indicated that the Examiner has recognized patentability of the subject matter of claim 9 because it was not rejected under 35 U.S.C. 102 or 35 U.S.C. 103.

- In response to argument (1), the Examiner respectfully disagrees. Applicant is aware of the fact that if there is any allowable subject matter in a given set of claims, the particular claim(s) with the allowable subject matter will be identified under the heading for example "allowable subject matter". However, no such distinction has been made in the previous office action regarding any of the claims presented including claim 9. Only because claim 9 was not included either in the 35 U.S.C.102 rejection or in the 35 U.S.C.103 rejection, this does not mean that the claim is allowable. As already presented in this current office action, the prior art does teach or suggest the limitations of all currently presented claims, including claim 9.

(2) Independent claim 1 is directed to a "device for apportioning food, the device being configured to provide, in response to user input, a portion of food having a predetermined number of calories." By its own terms, the claimed device is configured to provide a portion of food in response to user input relating to a predetermined number of calories. By contrast, the scale disclosed by Missler et al. does not apportion anything in response to user input with respect to a predetermined number of calories. Rather, as disclosed by Missler et al., the user simply slices food on a cutting board and then weighs it on a separately supported scale. Any portioning disclosed by Missler et al. is performed by the user in slicing the food, and not by the device itself. Furthermore, the notion of portioning food depending upon a predetermined number of calories input to the device is neither disclosed nor remotely suggested by Missler et al . . .

- In response to argument (2), the Examiner respectfully disagrees. First of all, the currently presented claim (e.g. see claim 1) does not distinctly specify what the user's

input is. The claim does not distinctly specify the user's input being *a predetermined number of calories input to the device*, as the Applicant has attempted to argue in the above argument. Note that claims are given the broadest reasonable interpretation without importing any limitations from the specification. Thus, one may interpret "the user's input" being placing some slices of the food (e.g. slices of meat) on the scale of the device. Also, based on the broadest interpretation, "the device for apportioning food" according to Missler's teaching is the scale that is utilized to measure the amount of food (e.g. slices of meat) that the user wants to apportion. That means, the user uses Missler's device for apportioning the meat (i.e. for dividing the given piece of meat into some desired amounts) by cutting (using knife or a cutting device, col.7, line 57) and placing the slices on the scale until the desired amount is reached. Thus, *the device for apportioning food* (e.g. the cutting board of Missler) *is configured to provide, in response to the user input* (e.g. placing some slices of the food on the scale), a portion of food having a predetermined number of calories (e.g. the display displaying the amount, i.e. weight or calorie, of the slice of meat on the scale). Note also that the portion of the food (e.g. the slice of meat) on the scale have a predetermined number of calories.

This brief analysis clearly indicates that Missler's device is indeed a *device for apportioning food* since it allows the user to apportion a given food into some desired amount (calories or weight). Note also that the display of Missler's device is configured to provide (display) the amount of the food in terms of any desired units of measurements (e.g. calorie or gram; col.5, lines 61-64).

- Regarding Applicant's argument concerning the newly presented claims, please refer to the above section (*Claim Rejections - 35 USC § 103*) for further detail.

(3) Applicant argues that there are fundamental differences between the claimed food package disclosed by Rhee that undermine the allegation of lack of novelty under 35 U.S.C. § 102. . . Rhee neither discloses nor suggests packaging material for packaging a plurality of different types of food products in an assembly of food products and displaying the caloric content of each of the different types of food products. Rather, Rhee merely discloses packaging individual food products with the packaging for each individual food product having a caloric content thereon. And certainly Rhee does not disclose or suggest an indication on the packaging material of the number of calories for each of the different types of food products being 50 or a multiple thereof.

- In response to argument (3), the Examiner respectfully disagrees. First of all, currently presented claim 56 does not appear to have any support in the specification (see 35 U.S.C. 112, first paragraph rejection, new matter rejection, above). Second, this claim is currently rejected under 35 U.S.C. 103(a), and therefore the argument regarding the novelty issue is not relevant.

However, as already presented, Rhee teaches or suggests a packaging material for packaging a plurality of different types of food products. For example, as already depicted in FIG 3f of Rhee's invention, the prior art already suggests a package for wrapping (packaging) a plurality of different food products. In this figure, at least the two sections of the package, section "a" and section "b" (see FIG A below with respect to the Examiner's interpretation) appears to have different types of food products.

Moreover, the amounts of calories indicated on the various sections of this package are multiples of 50. Therefore, the Examiner concludes that Rhee does teach or suggest Applicant's currently presented claimed features.

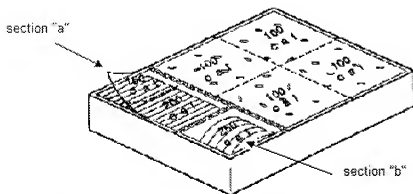


FIG A. (Examiner's interpretation of FIG 3f of Rhee's reference)

(4) Applicant argues that claim 33 has been clarified by reciting a package containing multiple servings of food with indications of the approximate total number of calories of food in the package, with an indication of the approximate number of calories of one of the multiple servings wherein the two approximate numbers are different. This is quite different from the package labeling disclosed by Arrendale et al. for the nutritionally-enhanced composite food material with a predictable nutrient amount. Arrendale et al. simply do not disclose nor suggest a package with multiple servings of the food as claimed . . .

- In response to argument (4) the Examiner respectfully disagrees. Here also, currently presented claim 33 is rejected under 35 U.S.C.103(a), and therefore the argument regarding the novelty issue is not relevant.

However, as already indicated above (*Claim Rejections - 35 USC § 103*), Arrendale teaches or suggests the above claimed features. For instance, Arrendale

teaches or suggests that nutrition facts such as serving size, serving per container, calories/serving are indicated (Para.0010). This clearly suggests for example, "a package containing multiple servings of food". FIG 1 of Arrendale's invention also depicts a label that indicates the calorie amount per serving and the container (i.e. package). In addition, the reference teaches that "Where a multiplicity of servings is provided within a given package, the nutrition facts may provide a corresponding element that provides for information on the total amount of nutrient levels within the entire package, as a multiple of the single serving of the product." (see Para.0020, lines 30-34). This suggests that the package displays nutrition facts in terms of multiple servings.

Therefore, the limitation regarding "approximate number of calories of the food in the package; and an indication thereon of the approximate number of calories of one of the multiple servings of the food package, wherein the two numbers are different", have already been taught or suggested by Arrendale.

Therefore, the Examiner concludes that Applicant's currently presented claims have already been taught or suggested by the prior art.

(5) Applicant argues that claim 40 has been clarified by specifically reciting packages of food. Clearly, the medical diagnostic monitoring apparatus and system disclosed by Bukowski in no way amounts to or suggests the packages of food as claimed . . .

- In response to argument (5), a new grounds of rejection has been established in this current office action due to the amendment made to the claims. See the above section for more detail (*Claim Rejections - 35 USC § 103*).

(6) Applicant argues that the method defined in independent claim 48 comprises a sequence of manipulative steps which includes receiving input corresponding to a food product, determining the calorie content of the food product based on the input, . . . The above argued fundamental differences between the claimed method and the methodology disclosed by Morris . . .

- In response to argument (6), here also due to the amendment made to the claims, new grounds of rejection has been established that addresses the current claims (see *Claim Rejections - 35 USC § 103* above).

(7) Applicant argues that claims 4 and 6 depend from independent claim 1. Claim 13, as amended, now also depends from independent claim 1 through dependent claim 4 . . . any portioning disclosed by Missler et al. is performed by the user in slicing the food, and not by the device itself. Furthermore, as argued above, the notion of portioning food depending upon a predetermined number of calories input to the device is not remotely suggested by Missler et al . . .

- In response to argument (7), the Examiner respectfully disagrees. The above argument appears to be based on a narrow interpretation of the claims. The currently presented claim (e.g. claim 1) does not specify any functional limitation that the device performs by itself without getting any input from the user. For example, a cutting knife is a device for apportioning (dividing up) a given food since knife is configured (made with

a sharp edge) to provide, in response to the user input (the user cutting a given food), a portion of food having a predetermined number of calories (i.e. the cut or sliced part of the food will have a predetermined number of calories, no matter what that predetermined amount is). Even without considering the whole device of Missler, a simple cutting knife meets claim 1 as already discussed. It should further be realized that according to the teaching of the prior art, the cutting board of Missler make use of a knife or a cutting device (col.5, line 57).

Here, even though the Applicant argues that the device of claim 1 apportion the food based on a predetermined number of calories inputted by the user, claim 1 does not positively recite the features as the Applicant has attempted to argue. For example claim 1 does not positively recite the device apportioning food based on a predetermined amount of calorie inputted by the user. As already mentioned above (response to argument (2)), claims are given the broadest reasonable interpretations without importing any limitation from the specification.

(8) Applicant argues that initially, claim 8 depends from independent claim 1. Applicant incorporates herein the arguments advanced in traversing the rejection of claim 1 . . . Simply put, it is inconceivable that one having ordinary skill in the art would have been motivated to modify the device of Missler et al., which is a cutting board with integral scale, by providing a nondestructive firmness measuring device for fruits as disclosed by Prussia et al. The Action's rejection appears to overlook the fact that the device of Missler et al. is designed to cut food . . .

- In response to argument (8), the Examiner respectfully disagrees. First of all it should be noted that fruit is also a food that can be cut (either by a knife or a cutting device), and placed on a scale to measure its weight. This helps the consumer to determine the amount of nutrition obtained from that fruit before consuming (note that Missler's device is capable of displaying weight or calorie of the food being measured). However, there is one condition that the unmodified device of Missler does not perform, i.e. it does not distinguish whether the fruit is ripe or not. Thus, one of ordinary skill in the art would readily be motivated to modify the device of Missler in view of Prussia in order to allow the modified system of Missler, not only to indicate the calorie of the given fruit based on its weight, but also to determine whether the fruit is indeed ripe or not by performing the firmness test. Therefore, Applicant's assumption that one of ordinary skill in the art would not be motivated to combine the two references is not persuasive.

(9) Applicant argues that in the statement of rejection the Examiner asserted that one having ordinary skill in the art would have been motivated to modify the device of Missler et al. by providing a capability to compute the price, in view of Overman . . . even if the applied references are combined as suggested by the Examiner, and Applicant does not agree that the requisite realistic motivation has been established, the claimed invention would not result . . .

- In response to argument (9), the Examiner respectfully disagrees. As already taught by the prior art, Missler's device is capable of weighting a given portion of food and display the calorie content or weight of the portion of food on the scale. However, this unmodified device does not display any information regarding the price of the

portion of food in relation to its calorie amount. On the other hand, Overman discloses a portable device that displays price information of food in relation to the calorie amount. Therefore, it is evident that one of ordinary skill in the art would be motivated to combine Missler's teaching with Overman's in order to help the consumer to allocate his/her spending appropriately based on the amount of calorie he/she can afford, so that the consumer would be able to make a proper choice that is consistent with his/her capacity.

- Regarding claims 34-35 and 39, Applicant argued that the argument presented with respect to claim 33 is incorporated since the above claims depend on claim 33.

Please refer to the response provided above with respect to claim 33 regarding this argument.

In addition, the Applicant does not appear to have any criticality as to why the features of claims 34 and 35 are important to the current invention. For example, there appears to be no rational why on the package the total number of calories is about 20 or more calories greater than the number of calories of one serving. Similarly, there appears to be no rational why on the package the total number of calories is about 50% or more greater than the number of calories of one serving. Put it another way, there is no explanation in the current specification that discusses why the total number of calories should be 50% or more for example instead of 40% or more (or any other percentage for that matter). Nevertheless, determining such percentage values requires only a routine skill in the art.

Regarding claims 41, 47, 50-55, refer to the new grounds of rejection established in this current office action necessitated by the amendments.

(10) Applicant argues that claims 51 through 63 depend from independent claim 56. Applicant incorporates herein the arguments previously advanced in traversing the imposed rejection of claim 56 under 35 U.S.C. § 102 for lack of novelty as evidenced by Rhee . . .

- In response to argument (10), the Examiner believes that Applicant's statement "claims 51 through 63 depend from independent claim 56" is an error for -- claims 59 through 63 depend from independent claim 56 --, since claim 51 does not depend on claim 56.

Regarding claim 56, please refer to the response provided above (response to argument (3)) with respect to claim 56 for detail. In addition, regarding claims 59 and 62, when the general condition of the claimed subject matter (indicating the total calorie amount of food in a package and/or specifying the calorie amount per serving) is as taught by the prior art (e.g. see Rhee FIG 5 and Arrendale FIG 1), specifying this known feature for a particular purpose (e.g. specifying a particular amount or percentage) requires only a routine skill in the art.

Therefore, the Examiner concludes that Applicant's currently presented claimed limitations have already been taught or suggested by the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruk A. Gebremichael whose telephone number is (571)

270-3079. The examiner can normally be reached on Monday to Friday (7:30AM-5:00PM) ALT. Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Buk A Gebremichael/
Examiner, Art Unit 3715

/Cameron Saadat/

Primary Examiner, Art Unit 3715